

Order 99-7-3
Served July 8, 1999



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 6th day of July, 1999

Application of

OZARK AIR LINES, INC.

Docket OST-99-5288

for a certificate of public convenience and necessity under
49 U.S.C. 41102 to engage in interstate scheduled air
transportation of persons, property, and mail

ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY

Summary

By this order, we tentatively find that Ozark Air Lines, Inc., is a citizen of the United States and is fit, willing, and able to provide interstate scheduled air transportation of persons, property, and mail and should be issued a certificate of public convenience and necessity for such operations.

Background

Section 41102 of Title 49 of the United States Code (Transportation) ("the Statute") directs us to determine whether applicants for certificate authority to provide interstate scheduled air transportation are "fit, willing, and able" to perform such transportation, and to comply with the Statute and the regulations of the Department. In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress's concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing an undue risk to consumers, and (3)

will comply with the Statute and regulations imposed by Federal and States agencies. We must also find that the applicant is a U.S. citizen.

On March 16, 1999, Ozark Air Lines, Inc., of Columbia, Missouri, filed an application in Docket OST-99-5288 for a certificate to provide interstate scheduled air transportation of persons, property, and mail pursuant to section 41102 of the Statute. Ozark accompanied its application with the fitness information required by section 204.3 of our regulations.¹

No answers have been received to Ozark's application, and no other issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that Ozark is a U.S. citizen and is fit, willing, and able to operate its proposed interstate scheduled passenger service. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

The Company

Ozark, founded by Dr. W.E. "Wes" Stricker, the company's sole owner and Chairman of the Board,² was incorporated under Missouri State laws on September 11, 1998. The company has established its corporate headquarters and operations and maintenance base at Columbia Regional Airport in Columbia, Missouri. The applicant has not held any type of air transportation authority.

Once certificated, Ozark proposes to operate scheduled passenger service from Columbia offering three round trips six days each week to Chicago and two round trips six days each week to Dallas using two 32-seat Dornier DP-328 Jet aircraft.

Managerial Competence

Mr. John Ellis, an Airline Transport Pilot responsible for Ozark's overall startup activities, has served as President and Director of Operations for Ozark since its 1998 inception.³ For thirty-one years, Mr. Ellis was President and General Manager of Kal-Aero, a Part 135 air taxi operator and Part 145 repair station that he co-founded in 1967. Before then, Mr. Ellis served in the United States Navy as a fighter pilot.

Mr. Jeff Tjernagel, an Airframe and Powerplant Mechanic, was employed by Ozark as Director of Maintenance in 1999. For the seven years prior, Mr. Tjernagel worked for Fairchild Aerospace as Maintenance Program Development Manager and Chief Inspector. For five years, he worked for The Dee Howard Company as an aircraft inspector and large aircraft maintenance coordinator. For a total of two years, Mr. Tjernagel worked for The

¹ Information supplementing Ozark's application was filed on May 3, 1999.

² Dr. Stricker will not be involved in Ozark's daily operations.

³ Mr. Ellis, along with Dr. Stricker, are the only members of Ozark's Board of Directors.

Boeing Company as a flight line mechanic and for PDS Technical Services as an Airframe and Powerplant Mechanic.

Mr. Mark Combs, an Airframe and Powerplant Mechanic, was hired by Ozark as Chief Inspector in 1999. Mr. Combs possesses eight years of aviation maintenance experience that includes working as Chief Inspector for Aero Charter, as an aviation mechanic and inspector for Mountain Air Express, and as an aviation site maintenance manager for Merlin Express. He also served in the United States Air Force for two years as a crew chief and flight line mechanic.

Mr. Daniel P. Fischbach, an Airline Transport Pilot, joined Ozark as Director of Safety in 1999. Mr. Fischbach's aviation experience includes employment by First American Bank as a Captain for one year, and by Great Lakes Airlines and G.P. Express Airlines as a first officer for two years. The majority of Mr. Fischbach's aviation career was spent serving in the United States Navy for nearly twenty years as an Aviation Safety Officer and Aircraft Commander.

Mr. John Ekl, an Airline Transport Pilot, became Ozark's Chief Pilot in 1999. Prior to that time, Mr. Ekl served with Southwest Airlines for sixteen years as a first officer, Captain, check pilot, Chief Pilot, and Director of Flight Operations. Before then, he served in the United States Navy for thirteen years as fighter, attack and air show demonstration pilot. Mr. Ekl has recorded 27,722 hours of flight time.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Ozark has demonstrated that it has a management team who have the managerial skills and technical ability to conduct its proposed scheduled operations.⁴

Financial Plan and Operating Proposal

If granted the certificate authority it seeks, Ozark intends to provide scheduled passenger service from Columbia offering three round trips six days each week to Chicago and two round trips six days each week to Dallas using two 32-seat Dornier DP-328 Jet aircraft.

Ozark has provided a list of its anticipated pre-operating costs and a detailed monthly estimate of its expenses for the first year of its proposed operations. The company expects that its pre-operating expenses will total \$604,276 and that it will incur \$9.08 million in operating expenses for its first year of operations. We have examined these estimates and find them to be reasonable. Based on our analysis of Ozark's forecasts, the

⁴ Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals.

applicant will need access to resources of \$2.87 million to meet the Department's financial fitness criteria.⁵

UMB Bank of Jefferson City furnished a letter verifying the availability of a \$3.0 million line-of-credit for purposes of providing Ozark working capital for its proposed operations. In addition, Dr. W.E. Stricker, Ozark's sole owner and Chairman of the Board, submitted a letter verifying that he will use any and all resources available to him for the company's start-up and continuing operations. In support of his financial commitment to the carrier, Premier Bank supplied a letter verifying that Dr. Stricker has a substantial amount of funds on deposit that will enable him to fulfill his pledge to the company's operations.

Based on our assessment of Ozark's operating proposal and available financial resources, we tentatively conclude that it will have access to sufficient funds to undertake the proposed certificated operations without posing an undue risk to consumers or their funds.

Compliance Disposition

Ozark stated that there are no actions or outstanding judgments against it or its owner or any of its key personnel, and that there are no pending investigations, enforcement actions, or formal complaints that have been brought by the Department, including the FAA, against the company or its owner or any of its key personnel with respect to compliance with the Statute or any orders, rules, or requirements issued pursuant to the Statute. Ozark also maintained that there have been no charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violations brought against it, its owner, or its key personnel.

Our search of the Department's records found no compliance problems with Ozark, its owner or key personnel. Further, the FAA has stated that Ozark has submitted its preapplication statement of intent for certification under Part 121 of the Federal Aviation Regulations and that the certification process is proceeding normally. Moreover, the FAA has stated that the company's proposed key technical personnel are properly qualified, and that the FAA knows of no reason why we should we act unfavorably on Ozark's application.

Based on these considerations, we tentatively conclude that Ozark will have the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

⁵ In evaluating an applicant's financial fitness, the Department generally asks that the company have access to financial resources sufficient to cover all pre-operating expenses (in this case, \$604,276) plus a working capital reserve equal to the operating expenses that would be incurred during three months of normal certificated operations. Because projected operations during the first several months of air transportation services frequently do not include all costs that will be incurred during a normal period of operations, it is our practice to base our three-month test on one-quarter of the first year's operating cost forecast (in this case, one fourth of \$9.08 million is \$2.27 million). In calculating available resources, projected revenues may not be used.

CITIZENSHIP

Section 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the board of directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the Statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Ozark is a corporation organized under the laws of the State of Missouri. The applicant has provided an affidavit attesting that it is a U.S. citizen and has affirmed that its sole owner, Dr. Stricker, and all of its key personnel are U.S. citizens. Furthermore, there is nothing in the record that would lead us to conclude that control of Ozark is not with citizens of the United States.

In view of the foregoing, we tentatively conclude that Ozark is a citizen of the United States and is fit, willing, and able to provide the scheduled operations it proposes as a certificated air carrier.

OBJECTIONS

We will give interested persons 14 calendar days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 calendar days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses.⁶ We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Ozark's fitness and will issue it a certificate that will contain an exact copy of the attached Terms, Conditions, and Limitations.

EFFECTIVE CERTIFICATE CONDITIONS AND LIMITATIONS

If Ozark is found fit and issued the certificate it seeks, its authority will not become effective until the company has fulfilled all of the requirements for effectiveness as set forth in the terms and conditions attached to its certificate. Among other things, this includes our receipt of evidence that Ozark has been certified by the FAA to engage in the subject operations, a fully executed OST Form 6410 evidencing liability insurance

⁶ If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedures should be specified (*see* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

coverage that meets the requirements of section 205.5(b) of our rules, and a statement of any changes it may have undergone since its fitness was examined.

Furthermore, we remind Ozark of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that certificated air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness.

Moreover, given the limited scope of Ozark's proposed operations, we will impose certain limitations on its authorization to provide scheduled air service as a certificated air carrier. The Department has adopted a policy, consistent with the recommendations of the FAA 90-Day Safety Review, issued September 16, 1996, of imposing conditions in fitness orders to facilitate appropriate monitoring of individual air carriers' growth.⁷ Along these lines, we note that our finding of fitness for Ozark is based on the operating plans described in its application, namely, utilizing two 32-seat Dornier aircraft. Were the applicant to propose to expand its operations to include larger aircraft (*i.e.*, aircraft having 60 passenger seats or more), our fitness findings might no longer apply. Therefore, we propose to limit any authority issued to Ozark to operations with aircraft having 60 passenger seats or less. Should Ozark subsequently desire to acquire and operate larger aircraft, it must first be determined fit for such operations. Furthermore, should Ozark propose other substantial changes in its

⁷ See, *e.g.*, Orders 98-1-3, 97-10-22, 97-11-34, and 97-12-18.

ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.⁸ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).⁹

To aid the Department in its responsibility to monitor the fitness of new carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report, within 45 days following the end of the first year of actual flight operations, to the Air Carrier Fitness Division. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,¹⁰ and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and award a certificate to Ozark Air Lines, Inc., authorizing it to engage in interstate scheduled air transportation of persons, property, and mail, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the certificate award set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-99-5288, and serve them upon all persons listed in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar days thereafter.

⁸ Ozark may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership or management, and to determine what additional information, if any, will be required under section 204.5. In addition, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority.

⁹ We also remind Ozark about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the certificate authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume certificated operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

¹⁰ These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations and a twelve-month income statement ending that same date.

3. If timely and properly supported objection are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.¹¹
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.
5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

¹¹ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



SPECIMEN

Terms, Conditions, and Limitations

OZARK AIR LINES, INC.

is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

(1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for the operations proposed under this certificate, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(4) The operations authorized by this certificate are restricted to those performed with aircraft having a maximum capacity of 60 passenger seats or less. In the event the holder wishes to institute operations with aircraft having a larger capacity, it must first be determined fit for such operations.

(5) The holder's authority is effective only to the extent that such operations are also authorized by the FAA.

(6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:

(a) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

(b) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(9) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(10) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

**SERVICE LIST FOR
OZARK AIR LINES, INC.**

Attachment A

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